



January 8, 2026

[REDACTED]

RE: [REDACTED] v. DoHS/BFA  
ACTION NO.: 25-BOR-3385

Dear [REDACTED]

Enclosed is a copy of the decision resulting from the hearing held in the above-referenced matter.

In arriving at a decision, the State Hearing Officer is governed by the Public Welfare Laws of West Virginia and the rules and regulations established by the Department of Human Services. These same laws and regulations are used in all cases to ensure that all persons are treated alike.

You will find attached an explanation of possible actions you may take if you disagree with the decision reached in this matter.

Sincerely,

Lori Woodward, J.D.  
Certified State Hearing Officer  
Member, State Board of Review

Encl: Recourse to Hearing Decision  
Form IG-BR-29

cc: Julie Haines/Drema Berry, WV DoHS/BFA



- Account # [REDACTED] Statement Thru Date June 30, 2025; [REDACTED]  
 Account # [REDACTED] Statement Thru Date June 30, 2025; [REDACTED] Account # [REDACTED]  
 Statement Thru Date June 30, 2025; [REDACTED]  
 (June 20, 2025); Nasdaq Real Time Price [REDACTED] (June 20, 2025);  
 Nasdaq Real Time Price [REDACTED] (June 20, 2025)
- A-2 Asset Summary as of September 1, 2025; [REDACTED] County Tax Office Receipt of  
 Additional Property Listing year 2024; [REDACTED] estimated values of vehicles/trailers  
 dated August 20, 2025; [REDACTED] Account # [REDACTED] Statement Thru Date  
 September 1, 2025; [REDACTED] Account # [REDACTED] Statement Thru Date September  
 1, 2025; Copy of check #6626 and 6627 dated August 27, 2025; [REDACTED] Account  
 # [REDACTED] Statement Thru Date September 1, 2025
- A-3 WV Income Maintenance Manual (IMM), §5.3.1.B (excerpt)  
 A-4 WV Income Maintenance Manual (IMM), §24.8.1, §24.8.1.A-D  
 A-5 WV Income Maintenance Manual (IMM), §24.8.1.E-G (excerpt)  
 A-6 [REDACTED] v. West Virginia Department of Human Services Bureau for Family  
Assistance, Action No. 25-BOR-3241, Decision of State Hearing Officer Amy Hayes,  
 dated December 18, 2025.\*  
 A-7 [REDACTED] v. West Virginia Department of Human Services Bureau for Family  
Assistance, Action No. 25-BOR-3273, Decision of State Hearing Officer Kristi Logan,  
 dated December 16, 2025\*

\*The recent decisions from other Board of Review Hearings Officers were submitted as controlling precedent in this matter. However, each Board of Review Hearing Officer makes independent decisions based on the facts and evidence unique to the case before them. Thus, this case will be considered independently based on its own merits without consideration of the conclusions of these cases.

After a review of the record, including testimony, exhibits, and stipulations admitted into evidence at the hearing, and after assessing the credibility of all witnesses and weighing the evidence in consideration of the same, the Hearing Officer sets forth the following Findings of Fact.

### FINDINGS OF FACT

- 1) The Appellant applied for Long Term Care (LTC) Medicaid benefits with a needs date determined to begin September 2025.
- 2) On August 27, 2025, the Appellant made an application to [REDACTED] for the purchase of a \$100,000 irrevocable annuity policy. (Exhibit D-3)
- 3) On September 3, 2025, [REDACTED] accepted the Appellant's application and issued a \$100,000 irrevocable annuity with a right to cancel within 10 days from the date of the receipt. (Exhibit D-3)
- 4) The Appellant's bank account # [REDACTED] statement through the date of September 1, 2025, showed the amount available as \$124,017.79. (Exhibit A-2)

- 5) The Respondent determined that the Appellant had attributable liquid assets of \$50,000 and personal property assets of \$1,566, for a total of countable assets of \$51,566 for the month of September 2025. (Exhibit D-2)
- 6) On November 13, 2025, the Respondent issued a notice of denial advising the Appellant that his assets exceeded the allowable limit to receive LTC Medicaid benefits for September 2025. (Exhibit D-2)
- 7) The annuity is irrevocable with the Respondent assigned as the remaining annuitant after the community spousal share.
- 8) The Appellant was approved for LTC Medicaid effective October 1, 2025.

### APPLICABLE POLICY

The determination of countable assets is the same as for SSI-Related Medicaid, see Chapter 5. The SSI-Related Medicaid asset limit for one person is used. (**WV Income Maintenance Manual (IMM), Chapter 23, §23.11.5**) The SSI-Related Medicaid asset limit for one person is \$2,000. (**WV IMM, Chapter 5, §5.4**)

The asset eligibility determination for SSI Medicaid group applications must be made as of the first moment (defined as 12:00 a.m. of the first day) of the month of eligibility. **The client is not eligible for any month in which countable assets are in excess of the limit, as of the first moment of the month.** Increases in countable assets during one month do not affect eligibility unless retained into the first moment of the following month. (**WV IMM, Chapter 5, §5.3.1.B**)

A client may not have access to some assets. To be considered an asset, the item must be owned by, or available to, the client and available for disposition. If the client cannot legally dispose of the item, it is not his asset. (**WV IMM, Chapter 5, §5.3.4**)

**WV IMM, Chapter 5, §5.7.2.E, *Transfer to Purchase an Annuity***, in part: Establishment of an annuity is sometimes treated as a transfer of assets, depending on whether or not the annuity is actuarially sound. The average number of years of expected life remaining for the individual who benefits from the annuity must coincide with the life of the annuity for it to be actuarially sound and, thus, not treated as an uncompensated transfer of assets. If the individual is not reasonably expected to live longer than the guarantee period of the annuity, the individual will not receive CMV. The annuity is not, then, actuarially sound and a transfer of assets for less than CMV has taken place. **The transfer is considered to have occurred at the time the annuity was purchased.** Only the amount that is not actuarially sound is treated as an uncompensated transfer. Life Expectancy Tables are found in Chapter 24, Appendix D

Assets may be either liquid or non-liquid. An asset is converted from one form to another by sale or exchange. In addition, assets may be exchanged for assets of the same form. When

assets are converted, the Worker must determine if the result of the conversion is an excluded or non-excluded asset. The result of the sale of an asset is never counted as income or as a lump-sum payment to the client. The new or converted asset must be evaluated as any other asset to determine continuing eligibility. **(WV IMM, Chapter 5, §5.3.5)**

An annuity purchased on or after November 1, 2008, is considered a permissible transfer if it is an irrevocable or unassignable annuity. **(WV IMM, Chapter 5, §5.3.B)**

### DISCUSSION

The Appellant was admitted to the [REDACTED] (nursing home) on June 20, 2025. The Appellant applied for LTC Medicaid and was determined to have a needs date of September 1, 2025. On August 27, 2025, the Appellant applied to [REDACTED] to purchase a \$100,000 irrevocable annuity. [REDACTED] issued an annuity on September 3, 2025, with a 10-day right to cancel clause. Because the annuity had a 10-day right to cancel clause, the Respondent considered the annuity to be revocable and thus the portion not attributed to the Appellant's community spouse was a countable liquid asset for the month of September (\$50,000). The Appellant's LTC Medicaid application was denied for September 2025, for excessive assets but was approved for ongoing LTC Medicaid effective October 2025.

The Appellant appeals the Respondent's determination that he had excessive assets for LTC Medicaid for the month of September 2025. Specifically, the Appellant avers that the Respondent erred in determining that the attributable portion of a \$100,000 annuity (\$50,000) as a liquid asset for the month of September. The Respondent must prove, by a preponderance of the evidence, that its determination of excessive assets for the month of September 2025, was correct.

Policy instructs that LTC Medicaid be considered SSI-Related Medicaid for asset purposes, resulting in an asset limit of \$2,000 for the Appellant. Countable assets must be below the asset limit as of the first moment of the first day of the month to be eligible. An applicant is not eligible for any month in which countable assets are in excess of the limit, as of the first moment of the month. Additionally, to be considered an asset, the item must be owned by, or available to, the client and available for disposition. If the client cannot legally dispose of the item, it is not his asset.

The Respondent's representative posited that because the annuity had a 10-day option to cancel, the annuity was revocable up until the end of the cancellation period, which was past the first moment of the first day of September. Thus, the Respondent asserted that the annuity, less the amount attributable to the community spouse, should be counted as a liquid asset for the month of September.

The evidence showed that the Appellant's checking account # [REDACTED] as of September 1, 2025, had a balance of \$124,017.79. The testimony and evidence also showed that [REDACTED] accepted the Appellant's application for the purchase of an annuity and issued a contract on September 3, 2025. Because the issue date of the accepted contract for the annuity was past the first moment of the first day of September 2025, and the Appellant's bank account balance showed he had a

balance over the allowable asset limit as of September 1, 2025, the Respondent's November 13, 2025 decision to deny the Appellant's application for LTC Medicaid for the month of September 2025 is affirmed.

### **CONCLUSIONS OF LAW**

- 1) Policy directs that LTC Medicaid be considered SSI-Related Medicaid for asset purposes, resulting in an asset limit of \$2,000 for the Appellant who has a community spouse.
- 2) Policy requires that determination of assets must be made as of the first day of the first moment of the month of eligibility.
- 3) The evidence showed that the contract with [REDACTED] for the irrevocable annuity was issued on September 3, 2025.
- 4) The Appellant's checking account balance as of September 1, 2025, was \$127,017.49.
- 5) As of the first moment of the first day of September 2025, the Appellant's countable assets, after the community spouse deduction, included \$50,000 of liquid assets and \$1,566 of personal property assets, for a total of \$51,566.
- 6) The Appellant was over the allowable asset limit as of the first moment of the first day of September 2025, for LTC Medicaid eligibility.

### **DECISION**

It is the decision of the State Hearing Officer to **UPHOLD** the decision of the Respondent to deny the Appellant Long Term Care Medicaid benefits for September 2025.

**ENTERED this 8<sup>th</sup> day of January 2026.**

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**Lori Woodward, Certified State Hearing Officer**